

## **Part 10**

### **Contributions, Allocations, and Distributions**

#### **16-16-1001 Members' contributions.**

The organic rules shall establish the amount, manner, or method of determining any contribution requirements for members or shall authorize the board of directors to establish the amount, manner, or other method of determining any contribution requirements for members.

Amended by Chapter 378, 2010 General Session

#### **16-16-1002 Contribution and valuation.**

- (1) Unless the organic rules otherwise provide, the contributions of a member to a limited cooperative association may consist of tangible or intangible property or other benefit to the association, including money, labor or other services performed or to be performed, promissory notes, other agreements to contribute money or property, and contracts to be performed.
- (2) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in a limited cooperative association's records.
- (3) Unless the organic rules otherwise provide, the board of directors shall determine the value of a member's contributions received or to be received and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been met.

Amended by Chapter 378, 2010 General Session

#### **16-16-1003 Contribution agreements.**

- (1) Except as otherwise provided in the agreement, the following rules apply to an agreement made by a person before formation of a limited cooperative association to make a contribution to the association:
  - (a) The agreement is irrevocable for six months after the agreement is signed by the person unless all parties to the agreement consent to the revocation.
  - (b) If a person does not make a required contribution:
    - (i) the person is obligated, at the option of the association, once formed, to contribute money equal to the value of that part of the contribution that has not been made, and the obligation may be enforced as a debt to the association; or
    - (ii) the association, once formed, may rescind the agreement if the debt remains unpaid more than 20 days after the association demands payment from the person, and upon rescission the person has no further rights or obligations with respect to the association.
- (2) Unless the organic rules or an agreement to make a contribution to a limited cooperative association otherwise provide, if a person does not make a required contribution to an association, the person or the person's estate is obligated, at the option of the association, to contribute money equal to the value of the part of the contribution which has not been made.

Enacted by Chapter 363, 2008 General Session

#### **16-16-1004 Allocations of profits and losses.**

- (1) The organic rules may provide for allocating profits of a limited cooperative association among members, among persons that are not members but conduct business with the association,

- to an unallocated account, or to any combination thereof. Unless the organic rules otherwise provide, losses of the association shall be allocated in the same proportion as profits.
- (2) Unless the organic rules otherwise provide, all profits and losses of a limited cooperative association shall be allocated to patron members.
  - (3) If a limited cooperative association has investor members, the organic rules may not reduce the allocation to patron members to less than 50% of profits. For purposes of this Subsection (3), the following rules apply:
    - (a) Amounts paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members.
    - (b) Amounts paid, due, or allocated to investor members as a stated fixed return on equity are not considered amounts allocated to investor members.
  - (4) Unless prohibited by the organic rules, in determining the profits for allocation under Subsections (1), (2), and (3), the board of directors may first deduct and set aside a part of the profits to create or accumulate:
    - (a) an unallocated capital reserve; and
    - (b) reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, cooperative development; creation and distribution of information concerning principles of cooperation; and community responsibility.
  - (5) Subject to Subsections (2) and (6) and the organic rules, the board of directors shall allocate the amount remaining after any deduction or setting aside of profits for unallocated reserves under Subsection (4):
    - (a) to patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and
    - (b) to investor members, if any, in the ratio of each investor member's contributions to the total contributions of all investor members.
  - (6) For purposes of allocation of profits and losses or specific items of profits or losses of a limited cooperative association to members, the organic rules may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods.

Amended by Chapter 378, 2010 General Session

**16-16-1005 Distributions.**

- (1) Unless the organic rules otherwise provide and subject to Section 16-16-1007, the board of directors may authorize, and the limited cooperative association may make, distributions to members.
- (2) Unless the organic rules otherwise provide, distributions to members may be made in any form, including money, capital credits, allocated patronage equities, revolving fund certificates, and the limited cooperative association's own or other securities.

Enacted by Chapter 363, 2008 General Session

**16-16-1006 Redemption or repurchase.**

Property distributed to a member by a limited cooperative association, other than money, may be redeemed or repurchased as provided in the organic rules but a redemption or repurchase may not be made without authorization by the board of directors. The board may withhold authorization

for any reason in its sole discretion. A redemption or repurchase is treated as a distribution for purposes of Section 16-16-1007.

Enacted by Chapter 363, 2008 General Session

**16-16-1007 Limitations on distributions.**

- (1) A limited cooperative association may not make a distribution if, after the distribution:
  - (a) the association would not be able to pay its debts as they become due in the ordinary course of the association's activities; or
  - (b) the association's assets would be less than the sum of its total liabilities.
- (2) A limited cooperative association may base a determination that a distribution is not prohibited under Subsection (1) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
- (3) Except as otherwise provided in Subsection (4), the effect of a distribution allowed under Subsection (2) is measured:
  - (a) in the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the date money or other property is transferred or debt is incurred by the association; and
  - (b) in all other cases, as of the date:
    - (i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or
    - (ii) the payment is made, if payment occurs more than 120 days after the distribution is authorized.
- (4) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.
- (5) For purposes of this section, "distribution" does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

Enacted by Chapter 363, 2008 General Session

**16-16-1008 Liability for improper distributions -- Limitation of action.**

- (1) A director who consents to a distribution that violates Section 16-16-1007 is personally liable to the limited cooperative association for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the director failed to comply with Section 16-16-818 or 16-16-819.
- (2) A member or transferee of financial rights which received a distribution knowing that the distribution was made in violation of Section 16-16-1007 is personally liable to the limited cooperative association to the extent the distribution exceeded the amount that could have been properly paid.
- (3) A director against whom an action is commenced under Subsection (1) may:
  - (a) implead in the action any other director who is liable under Subsection (1) and compel contribution from the person; and
  - (b) implead in the action any person that is liable under Subsection (2) and compel contribution from the person in the amount the person received as described in Subsection (2).

- (4) An action under this section is barred if it is commenced later than two years after the distribution.

Enacted by Chapter 363, 2008 General Session

**16-16-1009 Alternative distribution of unclaimed property, distributions, redemptions, or payments.**

A limited cooperative association may distribute unclaimed property, distributions, redemptions, or payments by complying with Section 3-1-11.

Enacted by Chapter 363, 2008 General Session